IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 391 OF 1997

Mrs. Serafine Diniz,
major in age,
A Primary School Teacher,
Primary Section,
Our Lady Mother of the
Poor High School,
Tilamol, Sheldem,
Quepem, Goa. ... Petitioner.

versus

1. State of Goa,
through the Chief Secretary,
having his Office at
Secretariat, Panaji, Goa.

2. The Director of Education,
C/o Directorate of Education,
Panaji, Goa.

3. The Diocesan Society of
Education, registered under
the Societies Registration Act,
through the Secretary - DSE,
having his Office at Paco
Patriarchal Panaji - 403 001,
B. B. 216, Goa.

4. Our Lady Mother of Poor
High School, through the
Principal/Manager of the
School, Tilamol, Sheldem,
Quepem, Goa.

5. Mrs. Bela D'Costa,
Teacher, Primary Section,
Our Lady Mother of Poor
High School, Tilamol,
Sheldem, Quepem, Goa. ... Respondents.

Mr. M. S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. H. R. Bharne, Government Advocate for Respondent Nos.1 and 2.

Mr. J. Godinho, Advocate for Respondent No.3.

Mr. M. B. D'Costa and Mr. J. A. Lobo, Advocate for Respondent No.5.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 4TH JUNE, 2003.

ORAL JUDGMENT(PER F. I. REBELLO, J.)

The limited issue which arises in this Petition is whether Respondent Nos.1 and 2 are entitled to release the salary grants to the school run by Respondent No.3 namely Respondent No.4 for a fifth primary teacher for the period from June, 1993 to May, 1996. It is the case of the Petitioner that in fact, in the order of seniority of primary teachers, she ought to have been placed at serial no.3. That issue does not arise now, as the issue is limited to what is set out above. The Petitioner has been paid salary as primary teacher from June, 1996. The Petitioner first came to be appointed by letter dated 21st August, 1988 to the post of primary teacher in the fourth Respondent's School. The Petitioner in the course of her employment was rotated between the

primary, pre-primary and also in the non-teaching section.

2. Respondent No.1 decided to sanction salary grants to primary schools which switched over from English medium to Konkani medium from the year 1991. The number of teachers to be granted salary grants was also determined. In so far as the school run by the fourth Respondent is concerned, as per the Notification issued by Respondent Nos.1 and 2, it was set out that for the academic year 1990-91, there were 124 students. The year of commencement of grants for the school was 1991-92 and in that year, it was 126 students. The school was held to be entitled to grant for four teachers. That position has been corrected by the Respondents themselves by a subsequent letter of 7th May, 1996 when they pointed out that in the event when the school had switched over to primary section, if they had 104 students then the school would be entitled for the fifth primary teacher from 1st October, 1991. We have seen from the enrolment figures and the Notification that in June, 1990, the school had 124 students. The Petitioner was untrained and, therefore, was allowed to go on study leave to do her D.ed during the period 1990-93.

3. On 19th July, 1993, the Management of the

fourth Respondent addressed a letter to the second Respondent pointing out that the Petitioner who was untrained in June, 1990, had been granted leave to pursue her D.Ed studies. That the Petitioner had passed her D.Ed studies and that as on 7th September, 1993, there were 154 students and consequently, they would be eligible for five teachers as per policy decision of Respondent No.1. They, therefore, sought permission to allow appointment of the Petitioner as the fifth regular teacher with effect from the academic year 1993-94. The Respondent Nos.1 and 2 it seems did not reply or accede to the request of Respondent No.4. It was only by letter of 7th May, 1996 that the Office of Respondent No.1 intimated to the Management that if the strength of the primary section was 121 at the time of switch over then the school is entitled to a fifth teacher. However, the claim of arrears should be restricted strictly to the period for which she taught in recognised primary classes from 1st October, 1991 onwards and no arrears should be claimed for the period she has not taught in the recognised primary classes. It was further set out that in case she has not taught in the recognised primary classes for any period as a regular teacher, she may be brought to recognised primary classes from the day of re-opening of the school and accordingly the pay should be claimed for her services thereafter.

It is in these circumstances that the Petitioner was paid salary from June, 1996 as primary teacher.

4. The contention of the Petitioner is that she was appointed as a primary teacher. Merely because she was shown as a pre-primary teacher or for that matter as Clerk which she was not, she cannot be denied the salary. It is the further contention of the Petitioner that even if as on the notified date she had been working as pre-primary teacher that would be immaterial considering the Judgment of this Court in the case of **Maximiana Fernandes** v. **Director of Education** reported in 1995(2) GLT 68 and specifically Direction No.3. The Petitioner had to be brought back to the primary section and paid salary as primary teacher.

5. On the other hand, on behalf of Respondent Nos.1 and 2, it is pointed out that the Management itself by letter of 8th June, 1990, had submitted to the Government the proforma wherein the Petitioner herein was shown in the Non Teaching Staff. Our attention was thereafter invited to the letter of 19th February, 1995, where in the management school the Petitioner was working in the pre-primary section. The Petitioner however in that letter had noted as under "objection to be recorded separately". Based on

this, it is contended that the Management itself having treated the Petitioner as working in the pre-primary section, the Petitioner would not be entitled to salary grants.

6. Having heard the respective contentions, in our opinion, the Petition will have to be allowed. In the first instance, applying the third principle as laid down in the Judgment in the case of **Maximiana Fernandes** v. **Director of Education**(supra) the Petitioner who was admittedly appointed as a primary teacher will have to be brought into the primary section. The Petitioner had been granted study leave to pursue her D.Ed studies. After completion of D.Ed studies, in the normal course, she should have been allowed to resume her duties. The Respondent No.4, Management in fact did write to Respondnt No.1 that they are entitled to five teachers considering the strength being 154 students and in these circumstances, they should be allowed to appoint the Petitioner. In fact, there was no question of re-appointing the Petitioner as the Petitioner was in the roll of Respondent No.4 and had only been granted study leave. This is not a case where any rival was claiming to the said post. In the seniority list prepared by Respondent No.4, the Petitioner was shown at serial no.5. The first four teachers had

already been granted the pay scales. If the school was entitled to the fifth teacher, it would be the Petitioner who would be the fifth teacher. The mere fact that the Management at some point of time had shown the Petitioner as working as a non teaching staff and sometimes as pre-primary section considering the principles as already set out would be immaterial. Once the Petitioner was appointed as a primary teacher she was entitled to be continued as a primary teacher in the school. Once that be so, the contentions advanced on behalf of Respondent Nos.1 and 2 that the Petitioner was working as a non teaching staff or in the pre-primary section as per the records of Respondent No.4 would be of no consequence. The rights of the Petitioner cannot be determined by Respondent Nos.1 and 2 as to how the Respondent No.4 treated the Petitioner. It is the letter of appointment which must prevail. At the relevant time of appointment and as the schools were not aided the management used to direct the teachers to work in a non teaching job and or to pre=primary section and or rotate then. The subsequent fact that the Respondent Nos.1 and 2 have permitted appointment of the Petitioner from the year 1996 by itself indicates that the Petitioner was entitled to be absorbed in the said post. The Petition must, therefore, be partly allowed.

7. It was brought to our attention that during the course of this period, the Petitioner has worked in a leave vacancy and if she is entitled to be regularised as primary teacher and paid as primary teacher the salary she has drawn during the said period would have to be adjusted.

8. Having said so, the following Order:-

Respondent Nos.1 and 2 are directed to treat the Petitioner as primary teacher from June, 1993 and consequently to release the salary grant to Respondent No.4 for the period June, 1993 to May, 1996 for payment to the Petitioner less the amount already paid when the Petitioner worked in a leave vacancy as a primary teacher within twelve weeks from today.

9. Rule accordingly. There shall be no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS,J

RD.